IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 619 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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G.R.ALORIA - Applicant(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :
M/S TRIVEDI & GUPTA for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s): 1,
MR HRIDAY BUCH for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4 - 7.
MR ASHISH M DAGLI for Respondent(s) : 4,
MR MAKBUL I MANSURI for Respondent(s) : 6 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2007

ORAL JUDGMENT

Rule. Learned Advocates appearing on behalf of the respective respondents waive service of rule.

1. By way of this petition under Article 226 of the Constitution of India, read with Section 482 of the Criminal Procedure Code ('***Cr.P.C***.' for short), the petitioner herein – original accused has prayed for an appropriate order to quash set and aside the complaint against / qua the petitioner being Criminal Case No.844 of 2005 pending in the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad.

2. A criminal complaint being criminal case No. 844 of 2005 has been filed by the Registrar of Companies in the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad against one M/s.Gujarat Communication and Electronics Ltd (Under liquidation) and others inclusive of the petitioner for the offences under Section 58A(10) read with Section 58AAA of the Companies Act, 1956 ('Companies Act' for short) alleging inter-alia that certain depositors i.e. respondents Nos. 4 to 7 herein approached Company Law Board making a grievance that

inspite of the fact that deposits have been matured, amount on the said Fixed Deposits have not been paid to them and the Company Law Board passed an order on 06.08.2001 directing the Company to make repayment of maturity amount on the Fixed Deposit to respondent Nos.4,5,6 and 7. and as the order of Company Law Board has not been complied by the Company and its Officers, impugned complaint came to be filed for the aforesaid offences by further alleging inter-alia that the accused person being Officers in default, knowingly and willfully neglected to comply with the order passed by the Company Law Board.

It appears that learned Additional Chief Metropolitan Magistrate, Ahmedabad by order dated 14.11.2005 initially passed an order to issue process against the Company, its Managing Director (Petitioner) and other Directors of the Company for the offence under Section 58A(10) of the Companies Act. It also appears that subsequently the Registrar of Companies, Ahmedabad – original complainant submitted an application to delete original accused Nos. 2 to 5, 7 and 8 i.e. Others Directors of the Company and the learned Additional Chief Metropolitan

Magistrate, Ahmedabad passed an order on 10.01.2006 deleting original accused Nos. 2 to 5, 7 and 8 as accused in the said complaint. Thus complaint came to be continued only against the Company i.e. M/s. Gujarat Communication and Electronics Ltd. (Under liquidation) and the petitioner herein as Managing Director. Being aggrieved and dissatisfied with the aforesaid complaint as well as the process issued by the learned trial Court against the petitioner in the aforesaid complaint, the petitioner – original accused has preferred the present petition for the aforesaid reliefs.

3. Mr.Kamal Trivedi, learned Senior Advocate for M/s. Trivedi and Gupta appearing on behalf of the petitioner has submitted that in November 1994 and somewhere in January 1998 certain depositors had deposited diverse amount in the Fixed Deposit with the Company for a period of three years from the date of deposit and the said Fixed Deposits were to reach date of maturity in November 1997 and January 2001 respectively. It is also further submitted by him that the petitioner was posted and working as Commissioner of Transport and at that time in May

2001, he was assigned, on 15.05.2001 additional charge of the post of Managing Director only to look after winding up process of the Company which was wholly Government owned Company. It is submitted due to huge losses, voluntary retirement scheme was introduced in the year 1998 and; that the Board of Directors made an application for permission of closure to the specified authority under Section 25(o) of the Industrial Dispute Act, 1947 and the Company applied for the same on 01.11.2000 with an intention to close down the unit with effect from 01.02.2001 and the permission for closure was granted by the Specified Authority and the Labour Commissioner. Most of the employees were relieved on 31.12.2000 by way of VRS for which the Government released Rs.29.33 crores in the form of secured loan the Company. It is also further submitted that reference to BIFR under Section 15(1) of the SICA was also made for winding up of the Company and even before the petitioner was assigned said additional charge of the post of M.D.,GCEL, winding up petition being Company Petition No.310 of 2000 was pending before this Court wherein prayer for winding up of

the said Company was also made. It is submitted that in the meantime and while winding up petition being Company Petition No.310 of 2000 was pending, respondents herein submitted application before the Company Law Board under Section 58A(9) of the Companies Act and the order came to be passed by the Company Law Board directing the Company to refund the deposit amount by 31.10.2001 by Demand Draft with a direction that the said applications should not remain outstanding beyond the said period and by 07.11.2000 the Company should file affidavit of compliance. It is submitted that it was beyond the capacity of the Company and even in view of the pendency of winding up petition even the Company could not have made payment as any payment to the depositors during the pendency of winding up petition could be considered as preferential payment and *de-hors* the provisions of the Companies Act and, therefore, under the *bona-fide* impression the petitioner and the Company did not make any payment to the depositors and the impugned complaint came to be filed. Mr.Trivedi, learned Senior Advocate has further submitted that the State Government, has in

the peculiar facts and circumstances of the case and as a special case, sanctioned amount to be paid to the respondents towards outstanding maturity amount of Fixed Deposit and at the relevant time when the petition came to be filed, he was having cheques to be deposited in the Court. It is submitted that pursuant to the order passed by this Court, an amount of Rs.5,90,000/- (Rupees Five lac Ninety Thousand only) has been deposited by the petitioner with the Registry of this Court. It is also further submitted on instructions that even the State and the petitioner has also agreed to pay interest accrued on the FDRs to the respondents respectively within the time stipulated by this Court.

4. With a view to find out a way and without in any way affecting the rights and contentions of the respondents herein and even considering interest of the respondent Nos.4,5,6 and 7 herein – depositors and as the petitioner and the State Government shown their willingness to deposit the entire amount due and payable to the respondents, this Court passed an order to join original applicant – depositors as

party respondents to the present proceedings and accordingly whey were joined as party respondents nos. 4,5,6 and 7 in the present proceedings and Notice was ordered to be issued upon the said respondents also.

5. Mr.Ashish Dagli, learned Advocate appears on behalf of respondent No.4 - 'Baroda Management Association'. Mr.Makbul I. Mansuri, learned Advocate appears on behalf of respondent Nos.6 and 7 i.e. 'Pujya Vasantidev Samarak Trust' and 'Swami Vidyanadji Kelavani Trust'.

6. Mr.Dagli, learned Advocate has submitted and produced on record xerox copy of the Resolution of the Baroda Management Association dated 24.08.2007 and has submitted that respondent No.4 has resolved that 'since Fixed Deposit with GCEL will be returned with interest, Baroda Management Association is not interested in carrying forward the prosecution against the concerned officer'. The said resolution is directed to be taken on record. Similarly, Mr.Mansuri, learned Advocate appearing on behalf of respondent Nos.6 and 7 has produced one communication

dated 12.09.2007 addressed to him submitting that they have also no objection to quash the complaint as they will be getting their outstanding amount with interest and they may be permitted to withdraw the amount deposited by the petitioner. He has also submitted that suitable directions be issued directing the petitioner/ State to pay interest accrued on the said amount on the said Fixed deposits as what is deposited by the petitioner is the principal amount only and on such deposit, they have no objection if the impugned complaint is quashed and set aside. It appears that though served nobody appears on respondent No.5.

7. Now considering peculiar facts and circumstances, more particularly when the Company itself is under liquidation much prior to the petitioner becoming Managing Director and/or was given charge of the Managing Director of the Company only for the purpose of winding up of the Company which is State owned Company, winding up proceedings were already filed before this Court, not only that even much prior thereto the Company itself was before

the BIFR and even permission was also granted by the Competent Authority to close the Company, as required under the provisions of the ID Act and in view of the fact that in the meantime, respondent Nos.4,5,6 and 7 approached Company Law Board for getting their amount under the Fixed Deposit and when the petitioner / State Government has deposited entire amount due and payable to the respondent Nos.4,5,6 and 7 and concerned respondents have shown their willingness to accept the same and drop proceedings against the petitioner, in the facts and circumstances of the case, it appears to the Court that to continue the criminal proceedings against the petitioner would be unnecessary harassment to the petitioner and therefore, this is a fit case to exercise powers under Section 482 of the Cr.P.C. to do complete justice. It is also observed that present order is passed in the peculiar facts and circumstances of the case narrated herein above and the same shall not be cited as precedent in other proceedings and/or other case.

8. For the reasons stated herein above, the

petition succeeds. The impugned complaint being Criminal case No.844 of 2005 pending in the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad is hereby quashed and set aside.

9. It is reported that the petitioner has deposited amount of Rs.5,90,000/- (Rupees Five Lac Ninety Thousand only) in the Registry of this Court pursuant to the order dated 25.07.2007 towards the amount due and payable to the respondent Nos.4,5,6 and 7. It appears that so far as Respondent No.4 is concerned, he is to recover Rs.1,50,000/- (Rupees One lac Fifty Thousand only) towards principal amount towards Fixed Deposits and so far as respondent Nos.6 and 7 are concerned, they have to recover Rs.1 lac + Rs.1.50 lac + Rs.1 lac in all Rs.3.50 lacs towards principal amount towards fixed deposits. Respondent No.5 – 'Sharmila N.Pradhan' has to recover Rs.90,000/- (Rupees Ninety Thousand only) towards 6(six) Fixed Deposits each of Rs.15,000/-.

10. Under the circumstances, Office is directed to issue cheque of amount of Rs.2,00,000/- (Rupees Two lac only) in the name of 'Pujya Yogini

Vasantidevi Samarak Trust'; cheque of amount of Rs.1,50,000/- (Rupees One lac Fifty Thousand only) in the name of 'Swami Vidyanandji Kelavani Trust'. Aforesaid two cheques be given to Mr.Mansuri, learned Advocate appearing on behalf of respondent Nos.6 and 7 for and on behalf of respondent Nos.6 and 7. Similarly, Registry is also directed to issue cheque in favour of 'Baroda Management Association' – respondent No.4 herein for an amount of Rs.1,50,000/- (Rupees One lac Fifty Thousand only) and the said cheque be given to Mr.Ashish Dagli, learned Advocate appearing on behalf of respondent No.4 herein for and on behalf of respondent No.4. Aforesaid payment be made out of the amount already deposited by the applicant pursuant to the order passed by this Court dated 25.07.2007. So far as the balance amount is concerned, Registry is directed to invest the same in the Fixed Deposit in the name of 'Registrar, High Court of Gujarat' initially for a period of 3(three) years with cumulative interest as though served nobody appears on behalf of respondent No.5. Registry is also directed to issue Notice / inform respondent No.5 that an amount of Rs.90,000/- (Rupees

Ninety Thousand only) towards Fixed Deposit of GCEL is deposited by the petitioner and it will be open for respondent No.5 to approach this Court for withdrawal of the same by filing a simple note, so that an appropriate order can be passed by this Court. As and when such a note is filed appropriate order will be passed in favour of respondent No.5 permitting her to withdraw the said amount. As also agreed by the applicant and the State, respondent Nos.4,6 and 7 shall also be entitled to interest accrued on Fixed Deposits. It is directed, the petitioner or the State and/or concerned Department shall directly pay interest accrued on Fixed Deposits to the respective respondent Nos.4,6 and 7 within a period of 8(eight) weeks from today. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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